

U.S. BANKRUPTCY COURT
WESTERN DISTRICT OF VIRGINIA
Lynchburg (Charlottesville) Division

IN RE: Douglas Wade Lilly, Jr. Chapter 13
 Kira Brown Lilly Case No. 14-60581
 Debtor

DOUGLAS WADE LILLY, JR.

Plaintiff,

v.

AP No. _____

SPERRY MARINE FEDERAL CREDIT UNION
ATTN Joe Nasevich, Chair of Board of Directors
P.O. Box 7766
Charlottesville, VA 22906

ALSO SERVE:
Robin Elliott, Trustee
PO Box 7766
Charlottesville, A 22906

Defendant.

COMPLAINT TO AVOID LIEN

TO THE HONORABLE REBECCA B. CONNSELLY, U.S. BANKRUPTCY JUDGE:

COMES NOW the Debtor/Plaintiff, by counsel, pursuant to Bankruptcy Code §§ 506 and 1322, and files this Complaint to avoid a certain lien held by the creditor set forth above on property of the Plaintiff described as Plaintiff's real estate, and in support thereof, state as follows:

1. This case was commenced by the Debtors/Plaintiffs by filing a voluntary petition under Chapter 13 of the Bankruptcy Code on March 28, 2014.
2. This Court has jurisdiction under 28 U.S.C. § 1334. This is a core proceeding.
3. In the Debtors' Chapter 13 Plan and in their Schedule A, they apprised the Court that Debtor Douglas Lilly, Jr. owns a home located at 7043 Albevanna Spring Road, Scottsville, Albemarle County, Virginia, valued at \$102,400.00 based upon the current tax assessment, a copy of which is attached hereto and incorporated herein by reference.

4. The Plaintiff has a first deed of trust on the residence, held by Chase Manhattan Mortgage, successor in interest to MERS/C & F Mortgage Corporation, with an approximate payoff of \$118,999.00, recorded on September 7, 2005 as Instrument No. 2005-00016702 in the Albemarle County Circuit Court Clerk's Office. A copy of the relevant page of Debtors' credit report showing the payoff is attached hereto and incorporated herein.

5. The Plaintiff has second and third deeds of trust on the residence, held by Defendant, with a combined approximate payoff of \$19,999.82, recorded on August 14, 2007 under Instrument No. 2007-00013046, and on November 29, 2007 under Instrument No. 2007-00018115 in the Albemarle County Circuit Court Clerk's Office.

6. Because the amount of the first lien on said real estate exceeds the value of the property, there is no equity to which the second and third liens can attach.

7. The Plan has therefore proposed that the second and third liens would be avoided in its entirety and the entire debt would be made an unsecured claim and paid pro rata with the other allowed unsecured claims.

8. At or before confirmation of the Plan, Debtors' counsel has proposed to submit to the Court for entry an Order voiding this lien, which Order would then be recorded by Debtors' counsel in the aforementioned Clerk's Office.

WHEREFORE, the Debtors/Plaintiffs respectfully request that the Court enter an Order stating that the second and third liens in the approximate amount of \$19,999.82 on the residence of the Debtors, held by Defendant and recorded on August 14, 2007 under Instrument No. 2007-00013046, and on November 29, 2007 under Instrument No. 2007-00018115 in the Albemarle County Circuit Court Clerk's Office, are hereby avoided in their entirety, and the underlying debt is made an unsecured claim to be paid pro rata with the other allowed unsecured claims in the Debtors' Chapter 13 case, and to award Plaintiff such other and further relief as is just and proper.

Dated April 1, 2014.

/s/ Marshall M. Slayton
MARSHALL M. SLAYTON, VSB # 37362
BOYLE, BAIN, REBACK & SLAYTON
420 Park Street
Charlottesville, VA 22902
(434) 979-7900
Counsel for Debtors/Plaintiff